



Commission on Sexual Orientation and the Law

Legislative Reference Bureau, 1177 Alakea St., 6th Floor, Honolulu, HI 96813

Phone: (808) 587-0666; Facsimile: (808) 587-0681

Thomas P. Gill, Chairperson
Lloyd James Hochberg, Jr.
Robert H. Stauffer

Morgan Britt
Nanci Kreidman

L. Ku'umeaaloha Gomes
Marie A. "Toni" Sheldon

August 24, 1995

Mr. Thomas F. Coleman, Esq.
Executive Director
P.O. Box 65756
Los Angeles, CA 90065

Dear Mr. Coleman,

As you may be aware Act 5, Session Laws of Hawaii 1995, repealed the Commission on Sexual Orientation and the Law that was convened as a result of Act 217, Session Laws of Hawaii 1994 and convened a new seven member commission. The press release on the members of the new commission follows.

The new commission chairperson, Tom Gill, would like to orient the new commission members to the issues before the first meeting is called. One of the documents he would like to send each member is the Spectrum Institute's Special Report of March 1995, related to Gay Marriage in Hawaii. The Commission would be grateful if you could forward at least eight copies to the above address. I understand the Institute also has a report on Domestic Partnership Laws also issued in March 1995 that may be helpful to the Commission. If available, we would appreciate copies of this as well. Mahalo for your assistance.

Sincerely,

Pamela Martin
Staff Attorney for the
Commission on Sexual Orientation and the Law

Commission on Sexual Orientation and the Law

Legislative Research Bureau, 1117 Alaska St., 2nd Floor, Honolulu, HI 96813
Phone: (808) 547-6666; Fax: (808) 547-6681

James F. Cole, Director
Laurie A. Hays, Deputy Director
Marilyn M. Kinnaman, Secretary



August 24, 1994

Mr. Thomas F. Coleman, Esq.
Executive Director
P.O. Box 103756
Atlanta, GA 30382
Mr. Coleman

You may be aware that I design laws of Hawaii in my capacity as a member of the Commission on Sexual Orientation and the Law that was created as a result of Act 21, Session 1993. I have just received a new seven member commission. The past year on the part of the Commission follows:

The new commission chair elect, Tom Gill, would like to meet the new members at the first meeting of each of the departments he would be heading. The chair would like to give you a report on the Commission's progress. If you can, please let me know if you would like to attend. If you have any questions, please contact me at (808) 547-6666. I would be glad to provide you with a copy of the Commission's report.

James F. Coleman

James F. Coleman
Director

LEGALIZATION OF SAME-SEX MARRIAGE IS A SURE BET IN HAWAII -- OR IS IT?

Lambda Legal Defense and Education Fund is sending Evan Wolfson around the nation to meet with leaders of lesbian and gay groups. Wolfson's message is blunt: it is inevitable that Hawaii will legalize gay marriage in less than two years and so these groups must prepare for the political firestorms that are sure to ignite in Congress and in every state legislature.

Wolfson is co-counsel for three same-sex couples who may be headed for a victory in the Hawaii Supreme Court in the case of *Baehr v. Lewin*. So far, the Supreme Court has ruled that it is probably unconstitutional for the state to deny marriage licenses to same-sex couples.

The court ordered a trial at which the Attorney General must prove compelling reasons to prohibit gay marriages. The trial is expected to begin in July 1996.

COMPROMISE IS POSSIBLE

Not every legal expert agrees totally with Wolfson's forecast of success in the Hawaii Supreme Court. Jay Kohorn, a legal veteran who has fought against sexual orientation discrimination for nearly a generation says that, while Wolfson's prediction may very well come true, it is still possible for the court to evade an ultimate constitutional decision ordering the state to grant marriage licenses to same-sex couples.

Another noted expert on these matters, Los Angeles attorney Thomas F. Coleman, agrees that there is still some "wobble room" for the Supreme Court -- but only if the state Legislature eliminates unjust discrimination against same-sex couples by enacting a comprehensive domestic partnership law before the case returns back to the Supreme Court for a final decision. His opinion about the outcome of the Hawaii case is based on more than speculation.

For some 23 years now, Coleman has been studying these issues. He has worked extensively with all three branches of government, at the national, state, and local levels, to end sexual orientation and marital status discrimination against unmarried couples.

POLITICIANS FACE TOUGH DECISION

According to Coleman, the decisive factor in this litigation may be how Hawaii Democrats handle the issue between now and early 1996, when the Legislature must decide whether to pass an alternative to same-sex marriage. Governor Ben Cayetano is a Democrat as are 80% of legislators in the Aloha state.

Cayetano was elected Governor in November 1994 after a tough four-way race. Each of the other three candidates came out against same-sex marriage. The results were 38% for Cayetano, with 30/30/2% for his opponents.

The anti-Cayetano votes closely match public opinion on the subject of same-sex marriage. A statewide poll done by the Honolulu Advertiser in February 1994 shows that 67% of respondents oppose legalizing same-sex marriage, with 25% in favor and 8% undecided.

After the Supreme Court first indicated its inclination to mandate the legalization of same-sex marriage, legislators overwhelmingly passed a new law reaffirming that marriage is a relationship between a man and a woman. Although the statute criticized the court's opinion, the law was purely a symbolic gesture to appease the public. Since the tentative decision of the Supreme Court to legalize gay marriages is based on the state constitution's equal protection clause, lawmakers lack the authority to directly overrule the court.

The Legislature can throw only two roadblocks in the court's path. Two-thirds of the legislators could put a constitutional amendment on the ballot to let voters decide the issue -- but political experts say that won't happen. The other option is to pass a domestic partnership law eliminating discrimination against same-sex couples -- but that will require strong leadership from the Governor and key legislators such as Senator Rey Graulty. It may also require some prodding from moderate and liberal officeholders and candidates in other states who will be hurt the most if, much to the delight of the religious right, Hawaii legalizes gay marriage and makes it a national issue in upcoming races.

THE SAME-SEX MARRIAGE DECISION OF THE HAWAII SUPREME COURT

Baehr v. Lewin (Hawaii 1993) 852 P.2d 4

On December 17, 1990, two lesbian couples and one gay male couple filed applications for marriage licenses with the Department of Health in Hawaii. The department denied the applications solely because the couples were of the same sex.

On April 12, 1991, a health department official wrote to the couples explaining the reason why their applications for a marriage license had been denied. The letter stated: "This will confirm our previous conversation in which we indicated that the law of Hawaii does not treat a union between members of the same sex as a valid marriage. We have been advised by our attorneys that a valid marriage within the meaning of ch. 572, Hawaii Revised Statutes, must be one in which the parties to the marriage contract are of different sexes. In view of the foregoing, we decline to issue a license for your marriage to one another since you are both of the same sex and for this reason are not capable of forming a valid marriage contract within the meaning of ch. 572. Even if we did issue a marriage license to you, it would not be a valid marriage under Hawaii law."

THE LAWSUIT

On May 1, 1991, the couples filed a complaint in Circuit Court seeking a declaration that the marriage statute's requirement that couples must be of the opposite sex was unconstitutional. They asked the court to issue an injunction prohibiting the future withholding of marriage licenses solely on the basis the sex of the applicants. They argued that the statutes violated the right of privacy and the right to equal protection of the law as guaranteed by the state constitution.

The Attorney General filed a motion for summary judgment, asking the court to dismiss the case because the state's refusal to grant marriage licenses to same-sex couples was not unconstitutional. On October 1, 1991, the Circuit Court granted summary judgment in favor of the state and dismissed the couples' complaint. The couples appealed.

THE SUPREME COURT DECISION

On May 5, 1993, the Hawaii Supreme Court reversed the decision of the Circuit Court. The court unanimously ruled that the right to same-sex marriage is not a fundamental constitutional right protected by the right to privacy. The court, however, was badly split on the equal protection issue, with two justices declaring that it looked as if the equal protection clause had been violated, another justice voting to require a trial although he was not willing to rule that sex discrimination had occurred, and two dissenting justices firmly stating that disallowing same-sex marriage did not violate any part of the state constitution.

Because the court was split, without a clear majority view on what should happen in the trial court, the parties filed a motion for reconsideration and clarification. Before the motion was granted, however, a new justice joined the Supreme Court. She replaced one of the dissenting justices.

The new justice did not expressly indicate her views on the correctness of the opinion of the two-member plurality. But she cast her vote with them to clarify that, when the case returns to the trial court, the statute will be presumed to be unconstitutional. Thus, the Attorney General will have the burden to prove what, if any, compelling state interests require marriage to be limited to opposite-sex couples.

THE UPCOMING TRIAL

Circuit Judge Kevin Chang has postponed the trial until July 15, 1996. The purpose of the delay is to allow the Commission on Sexual Orientation to complete its work, and to give the Legislature time to respond to the Commission's report, possibly by enacting a comprehensive domestic partnership act. Passage of such a law may be sufficient to satisfy the equal protection requirements of the Hawaii Constitution. However, without such a law, it is likely that the trial court will rule that same-sex marriage is constitutionally required.

SAME-SEX MARRIAGE IS DEBATED COAST TO COAST
EXCERPTS FROM A SAMPLING OF NEWSPAPERS

"Hawaii was thrown into a quandary when the state Supreme Court ruled last year that Hawaii violated anti-discrimination provisions in its state constitution when it denied homosexuals marriage licenses. Since then, the state legislature has been grappling with the issue and its ramifications.

"Should the state legalize gay marriages? Should it pass a domestic partnership law to create a status less than marriage but with legal protection?

"Given the national political climate and the proliferation of anti-gay initiatives, compromise might be the better part of valor. As Hawaii House Judiciary Committee Chairman Terrance Tom, who supported the bill, observed, 'If this (Hawaii) Supreme Court decision is not reversed, mark my words: A (U.S.) constitutional amendment is inevitable and women's rights and homosexual rights will be battered from coast to coast.'"

-- St. Louis Post Dispatch
April 29, 1994

"Hawaii is poised to redefine the American family by legalizing gay marriage -- which no state has done -- or passing the nation's first statewide domestic partnership act."

-- Miami Herald
September 11, 1994

"Mormon Church leaders have called on their nearly 9 million members to actively oppose same-sex marriages Church spokesman Don LeFevre said the statement came in response to debate in Hawaii over efforts to legalize homosexual marriages."

-- Arizona Republic
February 26, 1994

"What if homosexuals could legally marry? That conversational icebreaker could soon throw bombshells across America if Hawaii permits gay matrimony as its high court says it may have to.

"Would other states be obliged to honor Hawaiian vows? Law and history say yes, and no. Homosexual couples who plan a wedding in Hawaii may need a lawyer when the honeymoon is over."

-- Phoenix Gazette
May 17, 1993

"No state permits same-sex marriage. But every state may soon have to address the issue. Last year, Hawaii's Supreme Court said the ban there conflicted with the state constitution and sent the dispute back to a lower court. Next spring, it is supposed to make a final ruling.

"If the Hawaii court says gays are allowed to marry, other states may have to recognize such unions. The U.S. Constitution requires every state to give 'full faith and credit' to the 'public acts, records and judicial proceedings of every other state' - which means that when a legal matter is resolved in one state, the outcome is honored by other states.

"But the Supreme Court has never said exactly how far this obligation extends. So if a lesbian couple living in Hawaii were to marry, move to California and become embroiled in a legal dispute between the partners, the California courts might decline to treat them as spouses. Or the California Legislature might pass a law refusing to recognize such unions. Or judges and lawmakers might decide it's not worth the trouble and agree to treat gay Hawaiian marriages like any other Hawaiian marriage."

-- St. Louis Post Dispatch
December 2, 1994

TWO BIG LURKING QUESTIONS:

WILL HAWAII LAWMAKERS PASS A DOMESTIC PARTNERSHIP LAW?

WILL HAWAII COURTS ACCEPT IT AS A SUBSTITUTE FOR GAY MARRIAGE?

After the state Supreme Court issued its opinion questioning the constitutionality of Hawaii's marriage laws, the Legislature passed HB 2312 by overwhelming margins in both houses. In addition to criticizing the court's decision and reaffirming that only opposite-sex couples may marry, the bill established a Commission on Sexual Orientation and the Law.

STUDY COMMISSION CONVENED

Under HB 2312 the Commission was directed to:

- * examine the precise legal and economic benefits extended to opposite-sex married couples, but not to same-sex couples;
- * examine whether substantial public policy reasons exist to extend such benefits to same-sex couples and the reasons therefor; and
- * recommend appropriate action which may be taken by the Legislature to extend such benefits to same-sex couples.

The Commission's work was interrupted when a federal judge ruled that its composition was unconstitutional. Before it disbanded, the Commission issued an interim report indicating that it had already examined one-third of more than 1,000 state statutes that arguably confer benefits or impose burdens on married couples.

The Governor and legislative leadership decided to convene a new commission to pick up where the old commission had left off. Under SB 888, the new commission has until December 1995 to issue its final report.

The Governor has appointed all seven members of the new commission. Four members were nominated by legislative leadership. It is widely expected that the Commission will recommend that the Legislature enact a comprehensive domestic partnership law as a secular substitute for same-sex marriage.

The question is whether the Legislature will act on this recommendation in time to affect the outcome of the gay-marriage litigation.

CONTINUANCE OF TRIAL IS PIVOTAL

Had the trial occurred on September 25, 1995, as it was scheduled, neither the Commission's report nor the Legislature's response to that report would have affected the decision of the trial court. However, since the trial has been postponed until July 1996, the role of the Commission takes on added importance. If the Commission files its report in a timely manner (December 1995), the Legislature will have ample opportunity to pass a comprehensive domestic partnership act (if it so decides) before its session ends in May 1996.

ATTORNEY GENERAL POSITION

The attorney general's current arguments will not win the case for the state. It is not enough to argue that the primary purpose of marriage is procreation which, the attorney general says, same-sex couples cannot do.

As the Supreme Court has already noted in its first decision, opposite-sex couples who are incapable of procreating are not barred from marrying. Also, as the plaintiffs argue, same-sex couples can procreate through artificial insemination or surrogate methods. If the state does not use something more than the procreation argument, the state is likely to lose the case.

The state's position would be strengthened by a domestic partnership act imposing the same burdens and benefits that opposite-sex couples receive when they marry, possibly satisfying the state constitution's equal protection clause. This would avoid expensive conflicts with the federal government and 49 states, all or most of which are likely to reject same-sex marriages performed in Hawaii. It also minimizes entanglement with religion since domestic partnerships would not involve a religious ceremony. Plus, it avoids impairing existing contracts, uniform state laws, and interstate compacts, all of which rest on an understanding that marriage involves opposite-sex relationships.

Some Reasons to Enact a Domestic Partnership Law in Hawaii

When Hawaii lawmakers reconvene in January 1996, will they pass a domestic partnership act to eliminate unjust discrimination against same-sex couples? Or will they do nothing and wait for the Supreme Court to mandate the legalization of same sex marriage? When they finally focus on the issue, politicians may have sound reasons to favor a domestic partnership law over court-ordered gay marriage.

Eliminate Discrimination. Gay couples who live in long-term relationships are treated unfairly by the law. With marriages having a median length of less than eight years, gay life partners argue that it is unjust for their relationships, many of which last one or two decades or more, to receive little or no legal protection. Whether it is employee benefits, filing joint taxes at a lower rate, or survivor rights when one partner dies, same-sex couples insist that the law must be reformed. Without the necessity of legalizing same-sex marriage, the Hawaii Legislature could pass a domestic partnership law that would impose the same burdens and benefits on same-sex couples that opposite-sex married couples now receive.

Separation of Church and State. The Catholic Church, Mormon Church, and most other organized religions are vehemently opposed to the legalization of same-sex marriage. They argue that the state has inherited the institution of marriage from the church, pointing to the fact that the sacrament of marriage has religious origins. To minimize any entanglement with religion on the issue of same-sex marriage, the state could create a new secular institution, known as a domestic partnership, and confer on domestic partners obligations and benefits similar to spouses. Such a precedent exists in three European countries that enacted "registered partnership" laws for same-sex couples.

Interstate Conflict. Passage of a domestic partner act would eliminate discrimination *within the borders of Hawaii* without creating an automatic conflict with the federal government and the other 49 states. In contrast, legalizing same-sex marriage will cast a cloud on Hawaii marriages, provoking legal battles that will clog federal and state courts for many years.

Employers Offering Domestic Partner Benefits* (Partial Listing)

States:
 Delaware
 Massachusetts
 Oregon
 Vermont

Cities:
 Ann Arbor, MI
 Berkeley, CA
 Boston, MA
 Brookline, MA
 Burlington, VT
 Cambridge, MA
 Chicago, IL
 East Lansing, MI
 Hartford, CT
 Iowa, IO
 Ithica, NY
 Laguna Beach, CA
 Los Angeles, CA
 Madison, WI
 New York, NY
 Oakland, CA
 Oak Park, IL
 Portland, OR
 Rochester, NY
 Sacramento, CA
 San Diego, CA
 San Francisco, CA
 Santa Cruz, CA
 Santa Fe, NM
 Seattle, WA
 Tacoma Park, MD
 W. Hollywood, CA
 W. Palm Beach, FL

Counties:
 Alameda, CA
 Hennepin, MN
 King, WI
 Los Angeles, CA
 Marin, CA
 Multonohah, TX
 San Mateo, CA
 Santa Cruz, CA

Universities:
 Brown University
 New York University
 Thomas Jefferson U.
 U. of Michigan
 U. of New Mexico
 U. of New York
 U. of Pennsylvania
 Wellesley College

Private:
 Advanced Micro Devices
 Ben and Jerry's
 Beth Isreal Medical Center
 Blue Cross of Mass.
 Boreland International
 Bureau of National Affairs
 Cambridge Technology Partners
 Capital Cities/ABC
 David Sarnoff Research Center
 Garfinkel's Dept. Store
 Genetech, Inc.
 Hilton Corporation
 Home Box Office
 Kaiser, Northeast Mass.
 Levi Strauss
 Lotus Development Corp.
 Mark Hopkins Hotel
 Microsoft Corp.
 MCA/ Universal
 Montefiore Medical Center
 Omni Corp.
 Northern States Power
 Novell Corporation
 Paramount Pictures
 Park Nicolet Medical Center
 New York Times
 SAS Institute, Inc.
 Seattle Times
 Silicon Graphics
 Sheraton Corp.
 Sony Entertainment
 St. Paul Companies
 Time Magazine
 Warner Brothers
 Woodward and Lothrop

* Benefits by each employer vary and may include either sick leave, bereavement leave, health, dental, or all of these.

THE TERM "FAMILY" IS HISTORICALLY BROAD ENOUGH TO INCLUDE DOMESTIC PARTNERS

In this country, the legal definition of marriage is understood to include two people of the opposite sex. From a global perspective, not one nation currently defines "marriage" broadly enough to include same-sex couples.

On the other hand, American law has treated the concept of "family" as a term of inclusiveness and flexibility. That is why courts in many states have invalidated zoning ordinances that attempted to prevent unmarried adults from living in neighborhoods zoned for single family use. That is also why nearly 200 public and private employers throughout United States have redefined "immediate family" in their employee benefits plans to include domestic partners, thus enabling workers to take sick leave when their partner is ill, bereavement leave when he or she dies, and to put a lifemate on the company's health plan.

The term "family" is derived from the Latin term "familia" which means household. In American law, the primary definition of "family" refers to a group of persons living in a single housing unit in a relationship that is intimate, permanent, and interdependent. The dictionary has secondary definitions which are narrower and which refer to a nuclear biological family of parents and children or to an extended blood family that includes all blood relatives in a kinship network. However, the primary definition of is not limited to blood, marriage or adoption.

A recent leading case regarding the definition of family is *Braschi v. Stahl Associates* (1989) 74 N.Y.2d 201. New York's highest court was called upon to determine whether a surviving same-sex life partner of a tenant could be considered a family member of the deceased tenant. While both men lived in the rent-controlled apartment for years, the lease was only in the name of one of them. When the named tenant died, the landlord tried to evict the survivor. The survivor claimed a right to remain in the apartment under a law that conferred such benefit to "surviving family members" who lived on the premises with the deceased tenant. The law in question did not define "family."

Citing the primary definition of "family"

in both *Webster's Dictionary* and *Black's Law Dictionary*, the Court of Appeal ruled in favor of the surviving domestic partner, concluding:

"The term family . . . should not be rigidly restricted to those people who have formalized their relationship by obtaining, for example, a marriage certificate or adoption order. The intended protection against sudden eviction should not rest on fictitious legal distinctions or genetic history, but instead should find its foundation in the reality of family life. In the context of eviction, a more realistic, and certainly equally valid, view of family includes two adult lifetime partners whose relationship is long term and characterized by an emotional and financial commitment of interdependence. This view comports both with our society's traditional concept of 'family' and with the expectations of individuals who live in such nuclear units."

The conclusion of the New York court is reminiscent of a longstanding judicial precedent in California. In *Moore Shipbuilding Corp. v. Industrial Accident Commission* (1921) 185 Cal. 200, the California Supreme Court awarded worker's compensation survivor benefits to an unmarried woman who had lived with and who had been dependent upon a deceased worker. Ruling for her, the court declared:

"'Family' may mean different things under different circumstances. The family, for instance, may be . . . a group of people related by blood or marriage, or not related at all, who are living together in the intimate mutual interdependence of a single home or household."

"HAWAIIAN MARRIAGE TRAP" -- Op-Ed Article by Gabriel Rotello
Baltimore Evening Sun / April 21, 1994

Gay political leaders have been criticized for walking unprepared into some nasty ambushes recently, notably the gay/military debacle. Many now say that they'll never make another move before gauging the depth of the opposition. But if so, why are they stumbling blindly into what could easily be the mother of all ambushes: the Hawaiian marriage trap?

Hawaii's supreme court recently ruled that the ban on homosexual marriage probably violates that state's constitution. If things continue as they are, the court is expected to rule sometime in the next 18 months that such marriages are legal in Hawaii. Attempts by conservatives to derail the issue through legislation have failed so far, though they're not giving up.

On the surface, this pending victory might seem cause for a national gay celebration. U.S. reciprocity law mandates that marriages legally performed or dissolved in one state be recognized by all, which accounts for the historic popularity of quickie weddings and divorces in places like Nevada. Following that logic, many in the gay movement optimistically predict that homosexuals will soon be able to marry in Maui, then wing home and enjoy the fruits of wedded bliss in Anytown, USA.

But if the battle over the military's gay ban is any example, that flight of fancy may end in a fiery crash landing. Polls consistently show that the vast majority of Americans -- even those who support gay rights -- overwhelmingly oppose gay marriage. It doesn't take a Nostradamus to predict that if Americans wake up one morning and discover that a few judges in Hawaii have effectively legalized same-sex marriage nationwide, the ensuing backlash will dwarf the gay/military imbroglio.

At the very least it's likely that dozens of states, perhaps most, will seek to avoid Hawaii's fate by amending their constitutions to ban same-sex marriage. Conservatives in Congress, however, might not be satisfied with a piecemeal approach that leaves liberal states free to recognize gay marriages. Since the Constitution reserves marriage regulation to the states, the surest way effectively to ban same-sex marriage

nationwide is to amend the Constitution.

Such a reaction might seem extreme, and thus extremely unlikely. But recall the hysteria of the gay-military debate and imagine that multiplied manifold by the actual legalization of gay marriage in one U.S. state and the threat of its spread to others. In such a climate an amendment outlawing same-sex marriage would probably be supported by both parties and could conceivably sail through two-thirds of Congress and three-fourths of the states in record time.

Hardwiring homophobia into the very structure of the Constitution would be the Waterloo of gay rights. If worded carefully, such an amendment could result in official second-class status not only for gay relationships, but for homosexuals generally. Amending the constitutions of individual states would be equally damaging to lesbians and gays in those states. Even the mildest possible congressional response, a federal law, would be a catastrophic setback.

Therefore you'd think that, having been caught unprepared by the military mess, lesbian and gay leaders would either be desperately trying to avoid the marriage trap, or frantically preparing for it by alerting rank-and-file gays to the battle ahead, canvassing and lobbying Congress and state legislatures, and most of all trying to sway public attitudes about gay marriage now, before the deluge. Sadly, however, whether through overwork, underfunding, disagreement about marriage as a movement goal or just plain lack of foresight, gay political organizations seem utterly oblivious to the danger. They're limping toward this potential Armageddon as if it were Gays in Uniform, Part II.

Lesbian and gay victories have always been followed by vicious backlashes. Failing to predict that the last time was disastrous. Failing now could be fatal.

Gabriel Rotello is a columnist for New York Newsday.

STRONG PUBLIC OPPOSITION TO LEGALIZING GAY MARRIAGES, BUT GROWING SUPPORT FOR DOMESTIC PARTNER BENEFITS

Unless the Hawaii Legislature passes a comprehensive domestic partnership law by May 1996 as a secular substitute for same-sex couples – and comes up with compelling reasons for not legalizing same-sex marriage – many legal experts predict that the trial court by the end of 1996, and the state supreme court by the end of 1997, will order the state to begin issuing marriage licenses to gay and lesbian couples.

FEDERAL AND INTERSTATE CONFLICT

The legalization of same-sex marriage in Hawaii will automatically cause a confrontation with Congress since more than 1,000 federal statutes confer benefits or impose burdens on spouses. The same conflict will occur with the other 49 states (each of which has hundreds of statutes affecting the rights of "spouses") as same-sex couples fly to Hawaii for a vacation, get married, and return to their home states with a marriage certificate in hand. With limited exceptions, a home state has historically accepted a marriage performed in another state as valid for all purposes in the home state. Will state legislators or state courts declare same-sex marriage as an exception to the general rule?

POLITICAL CANDIDATES QUESTIONED

Candidates for state and federal offices should expect to be questioned on this issue. Do they favor legalized marriage for gay couples? If they are opposed, do they support a more modest domestic partnership law recognizing committed same-sex couples as one of America's diverse family structures, giving them various legal rights, such as protection against discrimination in housing, the right of one partner to put the other on his or her health and dental plan at work, or the right to sue a drunk driver for the wrongful death of a domestic partner? In other words, taking a position does not necessarily require an all-or-nothing choice between recognizing same-sex couples as legally married or continuing to have the law treat them as strangers with no relationship rights.

PUBLIC OPINION SURVEYS

Moral Values. A 1994 national poll by the Los Angeles Times shows that 61% of adults believe that "gay sex is always wrong." A 1978 Gallup Poll produced a similar response. But polls show that most people are against extreme governmental responses to same-sex couples.

Criminalization. In a 1990 Harris Poll, 63% opposed making consenting homosexual relations in private a crime. A 1986 Gallup Poll showed that 57% of adults opposed passage of criminal laws against homosexual activity.

Same-Sex Marriage. The public is against legalizing gay marriages by a 2-to-1 margin. Polls done by Time Magazine showed 67% opposed in 1992, 65% opposed in 1993, and 64% opposed in 1994. A national poll by EPIC/MRA Mitchell Research showed 63% opposed in 1995. A 1994 poll by the Honolulu Advertiser, revealed that 67% of Hawaii residents are against legalizing same-sex marriage.

Definition of Family. Although the public overwhelmingly supports a narrow view of the term "marriage," it accepts a definition of "family" that is broad enough to include domestic partners. A 1989 poll by Massachusetts Mutual Life Insurance Company showed that 74% of adults defined "family" as "a group of people who love and care for each other" while only 22% used a rigid definition of "a group of people related by blood, marriage, or adoption."

Domestic Partner Benefits. A 1989 poll by Time Magazine showed that 54% of adults agreed that gays should be able to get medical and insurance benefits from their partner's policies. In a 1986 poll by the Roper Organization, 88% of adults supported the concept of "equal pay for equal work." These attitudes may account for the fact that city workers in San Francisco and Seattle now receive the same health benefits for domestic partners as married workers get for spouses – a change occurring after voters in both cities approved domestic partner laws. Nationally, 100 private employers, 40 municipal employers, 50 colleges, and 20 unions have taken steps to eliminate discrimination against workers with domestic partners.



Commission on Sexual Orientation and the Law

Legislative Reference Bureau, 1177 Alakea St., 6th Floor, Honolulu, HI 96813

Phone: (808) 587-0666; Facsimile: (808) 587-0681

Thomas P. Gill, Chairperson
Lloyd James Hochberg, Jr.
Robert H. Stauffer

Morgan Britt
Nanci Kreidman

L. Ku'umeaaloha Gomes
Marie A. "Toni" Sheldon

October 18, 1995

Thomas P. Coleman, Esq.
Executive Director
Spectrum Insititute
P. O. Box 65756
Los Angeles, CA 90065

Dear Mr. Coleman:

Thank you for agreeing to appear before the Commission on Sexual Orientation and the Law at our October 25 meeting, starting at 9:00 a.m. in the Senate Majority Caucus Room, Room 605, 235 S. Beretania Street. The purpose of this meeting is to allow the Commission to hear a variety of positions and opinions relating to the third of three tasks assigned to it by the legislature in Act 5, Session Laws of 1995. The first task was to examine the legal and economic benefits extended to married couples but not to same-sex couples. The second task was to examine substantial public policy reasons to extend or not to extend such benefits in part or in total to same-sex couples. The item for discussion on the October 25 agenda reads:

"(3) Recommend appropriate action which may be taken by the legislature to extend such benefits to same-sex couples."

We hope you will be able to brief the Commission as to the positive and negative aspects of different types of legislation that the Commission could present to the legislature. If you wish to submit a memorandum or other written materials on these points it would be helpful to the Commission. There may also be questions from members of the Commission but we will try to keep your portion of the discussion within the limited ten-minute time period.

After the various resource witnesses, including yourself, have made their presentations, the Commission will hear testimony from the general public or other persons or groups who wish to put their positions or opinions on the record. The official notice and agenda of the meeting is enclosed for your reference. Enclosed is a draft of a proposed domestic partnership law that has been distributed to the Commission members and may be of interest to you.

Please call me or Pamela Martin at the Legislative Reference Bureau, at 587-0666, if you have any problems, questions, or need further information. Thank you for your help.

Sincerely,


Thomas P. Gill
Chairperson

Encs.

Commission on Sexual Orientation and the Law

Legislative Reference Bureau, 1177 Alhambra St., 6th Floor, Los Angeles, CA 90026
Phone: (800) 557-0066; Fax: (213) 557-0066



Robert Wagner
Chairman
Legislative Reference Bureau
1177 Alhambra St., 6th Floor
Los Angeles, CA 90026
Phone: (800) 557-0066; Fax: (213) 557-0066

October 18, 1995

Mr. and Mrs. [Name]
[Address]
[City, State, ZIP]

Thank you for your letter to the Commission dated [Date]. The Commission is pleased to have your input on this important issue. The Commission is currently reviewing the proposed legislation and will be holding public hearings in the near future. We will be sure to keep you informed of our progress.

(b) The Commission is currently reviewing the proposed legislation and will be holding public hearings in the near future. We will be sure to keep you informed of our progress.

The Commission is currently reviewing the proposed legislation and will be holding public hearings in the near future. We will be sure to keep you informed of our progress.

The Commission is currently reviewing the proposed legislation and will be holding public hearings in the near future. We will be sure to keep you informed of our progress.

[Signature]
[Name]
[Title]
[Address]